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10/684,464	10/15/2003	Jean-Claude Hauer	Q74306	4684
23373 7590 01/15/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
KATCHEVES, BASIL S				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/684,464  
Filing Date: October 15, 2003  
Appellant(s): HAUER ET AL.

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John M. Bird  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/22/08 appealing from the Office action mailed 1/29/08.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 3, 6, 9, 12, 19, and 27, 28, 30, and 31 are rejected under 35**

**U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,012,885 to Lovatt.**

Regarding claims 1, 27, 30 and 31, Lovatt discloses a closing device comprising a frame (fig. 1: surrounding door), a cover (fig. 1: door), a frame hinge knuckle (fig. 5: hatched area where 30 points), the hinge knuckle having a hinge surface (fig. 5: surface area inside where 29 points) and a pass through hinge knuckle opening (fig. 5: top opening of knuckle where numeral 46 is and adjacent to top of 30) between the outside and inside, the cover includes a hinge knuckle (fig. 5: hatched member where 44 points), with a pivot that extends into the outer area (fig 5: area top surface where 43 points and is exposed to the exterior), when the cover is closed, an opening (50) in the inner recess (space occupied by numeral 39, fig. 5) and an inserted plug (fig. 5: 48) positioned in the inner recess, below the knuckle and separate from the cover.

Regarding claim 3, Lovatt discloses the plug as capable of evacuating dirt from outside by being lifted up, thus allowing dirt to fall into the frame knuckle through the hinge knuckle opening and swept out through 50.

Regarding claim 6, 12, Lovatt discloses the hinge knuckle opening as delimiting at least a blocking surface of the cover when open.

Regarding claim 9, 19, Lovatt discloses the door as being capable of performing as a man hole.

Regarding claim 28, Lovatt discloses the seal of the knuckle group as blocking dirt.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 10, 11, 18, 25, 26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,012,885 to Lovatt.**

Regarding claims 2, 26, and 32, Lovatt does not disclose the plug as made from an elastomer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lovatt by using an elastomeric material, since Lovatt discloses the use of elastomer gaskets, in order to create a tighter seal. The applicant should also note that elastomers vary according to stiffness and flexibility.

Such a choice would have been an obvious design choice dependant upon the intended use of the door system.

Regarding claim 10, Lovatt discloses the plug as capable of evacuating dirt from outside by being lifted up, thus allowing dirt to fall into the frame knuckle through the hinge knuckle opening.

Regarding claim 11, Lovatt discloses the hinge knuckle opening as delimiting at least a blocking surface of the cover when open.

Regarding claims 18, Lovatt discloses the device as being capable of use as a manhole.

Regarding claim 25, Lovatt discloses the plug as made from a single piece.

#### **(10) Response to Argument**

Regarding claim 1, the applicant argues that Lovatt does not disclose a plug, Lovatt discloses a hook. The applicant should note that the component of Lovatt, referred by the examiner as being a plug, meets the structural limitations as recited in the claims of the instant application. The applicant claims a function for which the plug must perform and broad structural limitations of the plug. This component of Lovatt, cited by the examiner as the plug, inherently may perform the function claimed by the applicant. This plug also meets the few broad structural limitations as claimed by the applicant. The applicant also argues, regarding claims 27 and 30, the same points as claim 1. These arguments are addressed as above for claim 1.

The applicant also argues, regarding claim 2, that it is not obvious to make the knuckle component from an elastically deformable material. The applicant should note that steel contains a degree of inherent deformation but is not typically construed as elastically deformable. Lovatt discloses the use of elastomer (fig. 5: 18) for creating tighter seals and for providing structural integrity to the door system. The component, 18, carries a portion of the door weight. The applicant should note that structural elastomer is used in many circumstances where weatherproofing is required. Such an external door as disclosed by Lovatt is typical of this. Also, the thickness and density of elastomers may vary as an obvious design choice depending upon the intended use. It can be seen by those familiar in the art, that the elastomer 18 of Lovatt is no simple elastomer, but a load bearing member with significant strength and showing in figures 5 and 7, no significant compression from the weight of the door since 7 shows a lone elastomer component and 5 shows the elastomer component in use, under load. And the use of elastomer for the knuckle assembly would create a better seal between it and component 30 (fig. 5: see contact point 47).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Basil Katcheves/

Conferees:

Art Unit: 3635

Brian Glessner

/Brian E. Glessner/

Supervisory Patent Examiner, Art Unit 3633

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635